

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

STEVEN F PLEIS
Claimant

APPEAL NO: 13A-UI-03511-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALTER TRADING CORPORATION
Employer

OC: 02/24/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Alter Trading Corporation (employer) appealed a representative's March 15, 2013 decision (reference 01) that concluded Steven F. Pleis (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was convened on April 25, 2013, and reconvened and concluded on June 5, 2013. The claimant participated in the hearing and was represented by Bruce Gettman, Attorney at Law. Amy Lewis of Employer's Unity appeared on the employer's behalf and presented testimony from two witnesses, Andrew Cole and Dana Ploanka. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

After a prior period of employment with the employer's predecessor owner, the claimant started working for the employer when it took over the business on December 11, 2000. He worked full-time as general manager of the employer's Waterloo, Iowa scrap metal recycling business. His last day of work was January 29, 2013. The employer discharged him on that date. The reason asserted for the discharge was negligence in carrying out his duties by not detecting a situation of fraud and not timely acting on a report of potential fraud.

Just before lunch on January 10, 2013 the claimant's assistant manager mentioned to him that he had heard a rumor that another employee might be involved with an outside person in a company which had been selling scrap metal to the employer. The claimant was aware that the assistant manager had a rivalry with the other employee, but responded that they would need to

investigate into the matter. The claimant then went to lunch. Upon his return, he learned that the shredding machine was not working properly. A similar problem in late November 2012 had resulted in about a \$60,000.00 loss to the company, so the rest of the claimant's day on January 10, as well as January 11 and January 12, were spent working on getting that issue resolved. The claimant then left for a period of vacation on January 13.

He did check in daily with his assistant manager as to whether there were any issues. He did not specifically ask the assistant manager if there had been any new information obtained with regard to the concern that the other employee might be involved in a fraudulent set up, and the assistant manager did not make any report to the claimant that there was any further information. However, on about January 15, 2013 the assistant manager made a report to an operating vice president regarding his concerns; it is unknown whether he only made a general report of concern as he had to the claimant, or whether he had obtained some further information that he shared with the vice president and had not shared with the claimant.

Once the vice president received the report from the assistant manager, the employer conducted a more thorough investigation and concluded that the other employee was involved in a fraudulent scheme with a person who was client's purchasing agent and a person who ran an industrial maintenance company, that the company that had been set up to sell the scrap metal that had been illicitly obtained to the employer was not a bona fide business operation, and that the employer's other employee was using manual tickets to conceal the details of the transactions and also to inflate the amount of the sales.

The claimant was not scheduled to return from his vacation until January 24. However, the employer contacted the claimant and arranged a meeting with him on January 19 regarding the investigation. This was the first the claimant learned that further information regarding the assistant manager's concern had been discovered and that the employer was further investigating. After the claimant returned from vacation a further meeting was held on January 28. The claimant was then discharged on January 29.

The employer does not suggest that the claimant was complicit in the fraud. However, the employer concluded that the claimant should have detected the fraud through his review of daily and monthly reports, and more importantly, should have taken more immediate action when the assistant manager voiced his concern on January 10. The claimant acknowledged that perhaps he could have reviewed the daily and monthly reports more carefully, but indicated that his purpose in reviewing those reports was not so much as to detect a fraudulent scheme as to review them for other issues. He further relied on the audits of the reports as to any concerns of fraud. The claimant was not previously the subject of any discipline from the employer.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is his failure to detect the fraudulent scheme and his failure to take immediate action upon hearing the assistant manager's statement of concern. The employer has not established how a reasonable review of the daily or monthly reports would have clearly shown that fraud was occurring. Under the circumstances of this case, the claimant's failures were at most the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, or due to a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's March 15, 2013 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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